DR MILTON LUM SIEW WAH v. MAJLIS PERUBATAN MALAYSIA

HIGH COURT MALAYA, KUALA LUMPUR
NORDIN HASSAN J
[JUDICIAL REVIEW NO: WA-25-117-04-2017]
8 MAY 2019

WHISTLEBLOWER: *Disclosure of improper conduct to enforcement agency – Whistleblower Protection Act 2010 – Medical practitioner received confidential medical records of deceased patients – Medical practitioner lodged complaint against perpetrator to Malaysian Medical Council ('MMC') – Whether MMC enforcement agency within statutory meaning of 'enforcement agency' – Whether medical practitioner whistleblower – Whether MMC empowered to seek out court remedies on behalf of medical practitioner – Whether there was disclosure of improper conduct*

STATUTORY INTERPRETATION: *'enforcement agency' – Whistleblower Protection Act 2010 – Section 2 – Whether Malaysian Medical Council enforcement agency within statutory meaning of 'enforcement agency'*

ADMINISTRATIVE LAW: *Judicial review – Mandamus – Medical practitioner/applicant received confidential medical records of deceased patients – Applicant lodged complaint against perpetrator to Malaysian Medical Council ('MMC') – Whether MMC enforcement agency within statutory meaning of 'enforcement agency' – Whether applicant whistleblower – Whether MMC empowered to seek out court remedies on behalf of medical practitioner – Whether remedies available to applicant – Medical Act 1971, ss. 3(1), 29 & 30 – Whistleblower Protection Act 2010, ss. 13(1)(b), 14(2)(b) & 15(1)*

The applicant was a medical practitioner and a visiting consultant obstetrician and gynaecologist at the Assunta Hospital ('the hospital'). In 2009, the applicant received confidential medical records, which comprised clinical summaries and particulars of deceased patients of the hospital, circulated by the person in charge of the hospital ('Dr Lourdes'). This prompted the applicant to lodge a complaint to the respondent, against Dr Lourdes, pursuant to the Medical Regulations 1974 ('Regulations'), for breach of confidentiality ('the complaint'). In 2011, the hospital terminated the applicant's contract. Dissatisfied, the applicant claimed against the hospital, at the High Court, for breach of contract and contended that the termination was due to the complaint. The High Court allowed the claim but the decision was set aside by the Court of Appeal. The applicant's motion for leave to appeal to the Federal Court was also dismissed. Following an inquiry into the complaint, the respondent decided that no case had been established against Dr Lourdes. The applicant filed an application for judicial review for, *inter alia*, a *certiorari* order to quash the said decision. The

application was dismissed but was set aside by the Court of Appeal. The Court of Appeal ordered the respondent to find Dr Lourdes guilty and to hear his mitigation and impose the appropriate punishment. After conducting further inquiry, the respondent found Dr Lourdes guilty of infamous conduct, under s. 29(2)(b) of the Medical Act 1971 ('Act'), for breach of confidentiality. The respondent then reprimanded Dr Lourdes, pursuant to s. 30(iii) of the Act. The applicant further urged the respondent to take action against the hospital but the respondent argued that the applicant's request was beyond the respondent's jurisdiction. Hence, the present judicial review application by the applicant, seeking, *inter alia*, (i) a declaration that the respondent is an 'enforcement agency' within the meaning of the Whistleblower Protection Act 2010 ('WPA'); and further or in the alternative (ii) a *mandamus* order directing the respondent to act on behalf of the applicant by bringing an action against the hospital, under s. 15(1) of the WPA, for damages or compensation.

Held (dismissing application with costs):

(1) The applicant's complaint was investigated and taken action under the Act and the Regulations. The respondent is a body corporate which consists of members, as stipulated under s. 3(1) of the Act. The respondent has the disciplinary jurisdiction, over its members, and to impose punishment, as spelt out under ss. 29 and 30 of the Act. In dealing with any complaint or information, in relation to any disciplinary matter, an Investigation Committee, may be formed pursuant to reg. 26(1) of the Regulations to carry out an investigation. The procedure for the inquiry is provided under regs. 29, 30 and 31 of the Regulations. Based on the above provisions, it is clear that the respondent is a regulatory body for medical practitioners and has disciplinary jurisdiction over its members. However, based on the Act and the Regulations, the respondent does not have any investigation and enforcement functions or powers to be categorised as an enforcement agency under the WPA. (paras 12-15 & 17-18)

(2) Reference to the WPA showed that the respondent was not an enforcement agency, as defined under s. 2 of the Act. Section 13(1)(b) of the WPA requires the enforcement agency to refer any improper conduct to a disciplinary committee to initiate disciplinary proceedings or other appropriate action. Likewise, for complaints of detrimental action where the enforcement agency will make its recommendation to the disciplinary authority to initiate disciplinary proceedings or other appropriate action, as provided under s. 14(2)(b) of the WPA. Sections 13(1)(b) and 14(2)(b) of the WPA clearly show the different roles of an enforcement agency and a disciplinary authority. The contention that the respondent is an enforcement agency will make ss. 13 and 14 redundant and of no effect. (paras 22, 24, 25 & 26)

(3) To further support the finding that the respondent is not an enforcement agency, reference was made to Parliamentary debate on the WPA Bill, which showed that the Bar Council, a disciplinary authority for lawyers, is not an enforcement agency, as defined under s. 2 of the WPA. As such, the respondent, a disciplinary authority for medical practitioners, which has the functions and duties similar to the Bar Council, was also not an enforcement agency under the WPA. (paras 20 & 21)

(4) The complaint was made on 31 December 2009 and in the applicant's statutory declaration dated 4 January 2010. The complaint was before the coming into force of the WPA, which was 15 December 2010. In the circumstances, when the complaint was made by the applicant, he was clearly not a whistleblower under the WPA. There was no disclosure of improper conduct under s. 6 by the applicant as 'whistleblower' as defined under s. 2 of the WPA. (para 27)

(5) The applicant sought remedies from the court for detrimental action in reprisal for the disclosure of improper conduct, pursuant to s. 15(1) of the WPA. Since the applicant was not a whistleblower under the WPA and the respondent was not an enforcement agency under s. 2 of the WPA, the provision of s. 15(1) was inapplicable. The applicant's application for relief under the said provision was untenable. Consequently, the applicant had no basis to seek for an order of *mandamus* as the applicant did not have any legal rights under the WPA, in particular s. 15(1), and the respondent had no duty to act under the WPA. (paras 29-31)

Case(s) referred to:

Peguam Negara Malaysia v. Chin Chee Kow & Another Appeal [2019] 4 CLJ 561 FC ***(refd)***

Peguam Negara Malaysia v. Dr Micheal Jeyakumar Devaraj [2011] 9 CLJ 645 CA ***(refd)***

Legislation referred to:

Medical Act 1971, ss. 3(1), 29(2)(b), 30(iii)

Medical Regulations 1974, regs. 26(1), 29, 30, 31

Whilstleblower Protection Act 2010, ss. 2(a), 3, 6, 13(1)(b), 14(2)(b), 15(1)

For the applicant - Kamraj Nayagam & Maya Gayathri; M/s Mah-Kamariyah & Philip Koh

For the respondent - Jessica Ram Binwani & Ramitra Ramarao; M/s Kanesh Sundrum & Co

Reported by Najib Tamby

JUDGMENT

Nordin Hassan J:

Introduction

[1] The applicant filed a judicial review application seeking *inter alia* the following reliefs:

A (i) A declaration that the respondent is an "enforcement agency" within the meaning of s. 2 of the Whistleblower Protection Act 2010 ('WPA 2010');

(ii) Further or in the alternative, a declaration that the respondent's refusal and/or failure to accede to the applicant's request of 23 August 2016, which refusal was communicated to the applicant by way of letter dated 23 January 2017, is in breach of s. 3 of the WPA 2010 and on that account is null and void;

(iii) Further or in the alternative, an order for *certiorari* quashing the respondent's decision of 23 January 2017 that it is not an enforcement agency within the meaning of s. 2 of the WPA 2010 and is thus nor in a position to take action as requested as the matter is beyond its jurisdiction, which was made unfairly, unjustly and/or unreasonably;

(iv) Further or in the alternative, a mandatory order or *mandamus* directing the respondent to act on behalf of the applicant by bringing an action against Assunta Hospital under s. 15(1) of the WPA 2010 for damages or compensation, or any other relief that the court deems fit and just.

The Salient Facts

[2] The relevant facts in this application are as follows:

(i) the applicant is a medical practitioner registered under the Medical Act 1971 and was a visiting consultant obstetrician and gynaecologist at Assunta Hospital Petaling Jaya from 1994 to 2001.

(ii) In 2009, the applicant received confidential medical records which are clinical summaries and particulars of deceased patients of Assunta Hospital circulated by Dr Lourdes Dava Raj a/l Curuz Duraj Raj, the person in charge of Assunta Hospital.

(iii) the applicant then filed a complaint against Dr Lourdes for breach of confidentiality by letter dated 31 December 2009 to the respondent. The complaint was lodged pursuant to the Medical Regulations 1974.

(iv) Meanwhile, the applicant's contract as visiting consultant obstetrician and gynaecologist was terminated by Assunta Hospital by letter of termination dated 10 February 2011.

(v) Dissatisfied with the said termination of contract, the applicant filed a civil suit against Assunta Hospital for breach of contract and *inter alia* contends that the termination was because of the applicant's complaint against Dr Lourdes.

(vi) The applicant's claim against Assunta Hospital was allowed by the High Court but on appeal, the Court of Appeal on 18 July 2012 had set aside the High Court's decision. Thereafter, on 21 January 2014 the applicant's motion for leave to appeal to the Federal Court was dismissed.

(vii) As regards the applicant's complaint against Dr. Lourdes, having inquired into the said complaint, on 20 May 2014 the respondent decided that no case has been established against Dr. Lourdes and this decision was informed to Dr Lourdes by letter dated 12 June 2014.

(viii) The applicant then filed an application for judicial review *inter alia* for an order of *certiorari* to quash the said respondent's decision. However, on 8 May 2015, the High Court decided that the respondent's decision was not amenable to judicial review and dismissed the application.

(ix) On appeal, the Court of Appeal set aside the High Court's decision and ordered the respondent to find Dr Lourdes guilty and to hear his mitigation and impose the appropriate punishment.

(x) Further inquiry was then conducted by the respondent and on 21 June 2016, the respondent found Dr Lourdes guilty of infamous conduct under sub-s. 29(2)(b) of the Medical Act 1971 for breach of confidentiality. The respondent then reprimands Dr Lourdes pursuant to s. 30(iii) of the same Act.

(xi) The appeal by Dr Lourdes to the High Court against the respondent's decision was dismissed.

(xii) Next, by letter dated 23 August 2016, the applicant wrote to the respondent to take action against Assunta Hospital under s. 15(1) WPA 2010 as a result of the applicant having suffered detrimental action in reprisal for his disclosure to the respondent.

(xiii) In response, the respondent by letter dated 23 January 2017, informed the applicant that the respondent could not accede to the applicant's request as it is beyond the respondent's jurisdiction. Hence, the present judicial review application by the applicant.

The Grounds For The Judicial Review Application

[3] The applicant's grounds for the judicial review application can be summarised as follows:

(i) the respondent's decision *vide* letter 23 January 2017 is irrational, unreasonable and or in contravention of the WPA 2010 *inter alia* for:

(a) failing to recognise itself as an 'enforcement agency' within the meaning of 'enforcement agency' under s. 2 of the WPA 2010.

(b) failing to seek court remedies on behalf of the applicant as it is empowered to do under s. 15(1) of the WPA 2010 as an enforcement agency.

Findings Of This Court

[4] It is trite law that a decision in relation to a public duty or function including the Minister's decision in the present application is subject to a judicial review on the grounds of illegality, irrationality and procedure impropriety. The decision may be reviewed not only on its decision-making process but also its substance.

[5] In a recent Federal Court case of *Peguam Negara Malaysia v. Chin Chee Kow* [2019] 4 CLJ 561; [2019] MLJU 202, it states the following:

> [60] This landmark decision moved the courts from a position of deciding whether prerogative power existed to deciding if they were being carried out lawfully. Lord Diplock in his speech at p.401D of the *GCHQ* case enunciated three classic grounds for judicial review:
>
> > *Judicial review has I think developed to a stage today when.... one can conveniently classify under heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality'. The second 'irrationality' and the third 'procedural impropriety'* ...
>
> *By 'illegality'* as a ground for Judicial Review, I mean that the decision-maker must understand correctly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.
>
> *By 'irrationality'*, I mean what can by now be succinctly referred to as '*Wednesbury* unreasonableness' (see *Associated Provincial Picture Houses Ltd v. Wednesbury Corp*. [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.
>
> I have described the third head as *'procedural impropriety'* rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decisions. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that the expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. (emphasis added)

[6] In the present application, the core issue here is whether the respondent is an enforcement agency within the definition of enforcement agency under s. 2 of the WPA 2010.

[7] Section 2 of the WPA 2010 defined enforcement agency as follows: A

'enforcement agency' means:

(a) any ministry, department, agency or other body set up by the Federal Government, State Government or local government including a unit, section, division, department or agency of such ministry, department, agency or body, conferred with investigation and enforcement functions by any written law or having investigation and enforcement powers; B

(b) a body established by a Federal Law or State law which is conferred with investigation and enforcement functions by that Federal law or State law or any other written law; or C

(c) a unit, section, division, department or agency of a body established by a Federal law or State law having investigation or enforcement functions;

[8] In the present case, sub-s. 2(a) is the relevant provision and the key words in this provision are "... conferred with **investigation and enforcement functions** by any written law or **having investigation and enforcement powers**". D

[9] In this regard, the main consideration here is whether the respondent has the investigation and enforcement functions or powers under the law. E

[10] To determine this issue, reference to relevant provisions of the Medical Act 1971 ('the Act') and its regulations are pertinent.

[11] Firstly, the respondent is a body corporate which consists of members as stipulated under s. 3(1) of the Act which are as follows: F

Section 3(1):

3(1) A body corporate with perpetual succession and a common seal to be called the Malaysian Medical Council is established which shall consist of:

(a) **the Director General;** G

(b) **three fully registered practitioners** from among the members of the Faculty of Medicine or the staff of the Medical Centre of the University of Malaya to be nominated by the Council of the University of Malaya and appointed by the Minister;

(c) **three fully registered practitioners** from each of the Faculties of Medicine of the other Universities established under the Universities and University Colleges Act 1971 [Act 30], to be nominated from among the members of the Faculty by the Council of the respective University and appointed by the Minister; H

(d) **nine fully registered practitioners** resident in Peninsular Malaysia to be elected by the fully registered practitioners resident in Peninsular Malaysia I

(e) **one fully registered practitioner** resident in Sabah to be elected by the fully registered practitioners resident in Sabah;

(f) **one fully registered practitioner** resident in Sarawak to be elected by the fully registered practitioners resident in Sarawak; and

(g) **three fully registered practitioners** from the public services to be appointed by the Minister. (emphasis added)

[12] The respondent has the disciplinary jurisdiction over its members and to impose disciplinary punishment as spelt out under ss. 29 and 30 of the Act which are the following :

(i) Section 29

29. Disciplinary jurisdiction of the Council.

(1) The Council shall have disciplinary jurisdiction over all persons registered under this Act.

(2) The Council may exercise disciplinary jurisdiction over any registered person who:

(a) has been convicted in Malaysia or elsewhere of any offence punishable with imprisonment (whether in itself only or in addition to or *in lieu* of a fine).

(b) **has been guilty of infamous conduct in any professional respect;**

(c) has obtained registration by fraud or misrepresentation;

(d) was not at the time of his registration entitled to be registered; or

(e) has since been removed from the register of medical practitioners maintained in any place outside Malaysia. (emphasis added)

(ii) Section 30.

30. Disciplinary punishments.

The Council may, in the exercise of its disciplinary jurisdiction, impose any of the following punishments:

i order the name of such registered person to be struck off from the Register; or

ii order the name of such registered person to be suspended from the Register for such period as it may think fit; or

iii order the registered person to be reprimanded; or

iv make any such order as aforesaid but suspend the application thereof, subject to such conditions as the Council may think fit, for a period, or periods in the aggregate, not exceeding two years;

and may, in any case, make such order as the Council thinks fit with regard to the payment of the costs of the Registrar and of any complainant or of the registered person, and any costs awarded may be recovered as a civil debt.

[13] Further, in dealing with any complaint or information in relation to any disciplinary matter, an investigation committee may be formed pursuant to reg. 26(1) of the Medical Regulations 1974 ('the Regulations') to carry out an investigation.

[14] Next, the procedure for the inquiry is provided under regs. 29, 30 and 31 of the Regulations and for ease of reference, are as follows:

(i) Regulation 29.

20. Procedure for Inquiry.

(1) Where the Committee has reason to believe that the complaint or information is probably true, it shall:

(a) by order in writing require the attendance before the Committee, on a date and time and at a place to be specified therein, of the complainant and any person who from the complaint or information given otherwise appears to be acquainted with the circumstances;

(b) inform the practitioner against whom the allegations are made, the substance of the complaint or information, the date, time and place at which the inquiry into the complaint or information shall be made and of his rights to be present with or without counsel, to cross-examine such persons who may be called at the inquiry.

(2) The Committee shall convene on the date, time and place specified in the order and shall proceed to inquire into the allegation into the allegation made against the practitioner.

(3) The Committee shall examine the complainant and the persons in support of the allegation, who may in turn be cross-examined for the practitioner and if necessary re-examined and shall reduce to writing the statement made by the complainant and such persons examined.

(4) After taking the statements of the complainant and the persons in support of the allegation, the Committee shall:

(a) if it finds that there are not sufficient grounds to support the allegation, recommend to the Council that no action be taken; or

(b) if it finds that the statements support the allegation, frame the charge and explain to the practitioner hat he is at liberty to state his defence on the charge framed against him.

(5) If the practitioner after being informed of his right under sub-regulation (4) elects not to make a statement the committee shall recommend that there shall be an inquiry by the Council.

(6) If the practitioner elects to make his defence before the Committee, the Committee shall record his statement as far as possible, word for word.

(7) After taking the practitioner's statement, the Committee shall:

(a) if it finds that there are not sufficient grounds to support the charge, recommend to the Council that no action be taken; or

(b) if it finds that there are grounds to support the charge, recommend to the Council that there shall be an inquiry by the Council.

(ii) Regulation 30.

30. Records of inquiry to be transmitted to the Council.

The records of any preliminary inquiry by the Committee shall be prepared and sent to the Council within sixty days of completion of such inquiry.

(iii) Regulation 31.

31. Enquiry by the Council.

(1) The Council shall, where the Committee recommends that there shall be an inquiry, and may, for reasons to be recorded, in cases where the Committee, after hearing the statements of the complainants and other persons in support of the allegation has recommended that no action be taken, hold a disciplinary inquiry against the practitioner.

(2) The Council shall cause to be served on the practitioner a notice specifying the date, time and place of inquiry and shall provide such practitioner with a copy of the charge or charges framed by the Council after a consideration of the records submitted by the Committee.

(3) The Council shall not, on the date of the inquiry require any further statement to be recorded or made by the complainant or such persons who have made statements before the Committee;

Provided that it may call for and shall record any statement from any such person of it is of the opinion that it would be fair and just to do so.

(4) The Council shall, if after considering the statements made by the complainant and other persons in support of the allegation as found in the records of the preliminary inquiry by the Committee, it is satisfied that there are grounds to support the charge call upon the practitioner to make any further statement as he deems necessary and to call such other persons as he may require to support his defence and shall record such further statement or fresh statement.

(5) If at the close of the inquiry, the Council finds that no case has been made out against the practitioner it shall direct that the charge be dismissed and shall inform the practitioner accordingly.

(6) If at the close of the inquiry the Council finds the practitioner guilty of any disciplinary matter specified in section in section 29(2) of the Act, it shall inform the practitioner of its findings and the grounds for its decision and shall request such practitioner to make any plea in mitigation as he deems fit.

(7) The Council shall, after hearing any plea in mitigation, exercise any of its powers specified in section 30 of the Act.

[15] Based on the abovementioned statutory provisions, it is clear that the respondent is a regulatory body for medical practitioners and has the disciplinary jurisdiction over its members. The respondent's disciplinary power is in respect of matters as laid down under s. 29(2) of the Act as alluded to earlier.

[16] The investigation powers of the respondent is with regard to the disciplinary matters under the Act. The power to impose punishment under s. 30 of the Act is also in relation to the disciplinary matters under s. 29(2) of the Act.

[17] It is also an established fact that the applicant's complaint against Dr. Lourdes in 2009 was investigated and taken action under the Act and its Regulations.

[18] Having perused the Act and its Regulations, I find, the respondent does not have any investigation and enforcement functions or powers to be categorised as an enforcement agency under the WPA 2010.

[19] The composition of members of the respondent as provided under s. 3(1) of the Act clearly unable them to carry out the functions of an enforcement agency envisaged under the WPA 2010.

[20] To further support the finding that the respondent is not an enforcement agency, reference to Parliamentary debate on the WPA Bill reported in Hansard dated 20 April 2010 at pp. 96 and 97 is relevant, where the Deputy Minister at the Prime Minister Department, Datuk Liew Vui Keong *inter alia* explained as follows:

> Yang Berhormat Batu Gajah telah pun menyoal kenapa definisi agensi penguatkuasaan tidak diluaskan kepada agensi bukan (kerajaan) seperti **bar council**, union, dan juga lain-lain. Untuk makluman Yang Berhormat Batu Gajah bahawa definisi agensi penguatkuasaan ini tidak boleh diluaskan kepada agensi bukan kerajaan seperti Yang Berhormat katakan. Ini kerana agensi tersebut tidak mempunyai kuasa untuk menyiasat. Yang Berhormat Batu Gajah juga bertanya apakah jaminan terhadap setiap pendedahan perlakuan tidak wajar akan disiasat secara profesional dan jawatan ini telah pun saya beri tadi bahawa semua penyiasatan akan dibuat dan agensi penguatkuasa tersebut dengan profesionalisme dan juga dengan effectiveness untuk membuat siasatan yang lebih berobjektif itu dan …

[21] The said Parliamentary debate on the WPA 2010 Bill has shown that Bar Council, a disciplinary authority for lawyers is not an enforcement agency as defined under s. 2 of the WPA. As such, the respondent, a

disciplinary authority for medical practitioners which its functions and duty is similar as the Bar Council is also not an enforcement agency under the WPA 2010.

[22] On the same issue, reference to the WPA 2010 will also show that the respondent is not an enforcement agency as defined under s. 2 of the said Act.

[23] As regards the complaint of improper conduct, s. 13(1)(b) of WPA 2010 provides as follows:

> **Finding of enforcement agency after investigation of improper conduct**
>
> 13(1) If the report under section 12 makes a finding that:
>
> (a) …
>
> (b) the improper conduct constitutes a disciplinary offence, **the enforcement agency shall make a recommendation to the appropriate disciplinary authority** or other appropriate authority in the case of a public body or to the employer or other appropriate person in the case of a private body **to initiate disciplinary proceedings** or to take such steps as it deems appropriate against the officer of the public body or the officer of the private body who had committed the improper conduct; or … (emphasis added)

[24] Section 13(1)(b) requires the enforcement agency to refer any improper conduct to a disciplinary committee to initiate disciplinary proceedings or other appropriate action.

[25] Likewise, for complaints of detrimental action where the enforcement agency will make its recommendation to the disciplinary authority to initiate disciplinary proceedings or other appropriate action as provided under s. 14(2)(b) of the WPA 2010.

[26] Sections 13(1)(b) and 14(2)(b) above-stated clearly show the different role of an enforcement agency and a disciplinary authority. The respondent in the present case, as a disciplinary authority with no enforcement function or power is not an enforcement agency. The contention that the respondent is an enforcement agency will make ss. 13 and 14 redundant and of no effect.

[27] Further, the complaint by the applicant against Dr Lourdes was made on 31 December 2009 and in the applicant's statutory declaration dated 4 January 2010. The complaint was before the coming into force the WPA 2010 which was on 15 December 2010. In the circumstances, when the complaint was made by the applicant, he was clearly not a whistleblower under the WPA 2010. There was no disclosure of improper conduct under s. 6 by the applicant as 'whistleblower' is defined under s. 2 of the WPA 2010 as follows:

> … any person who makes a disclosure of improper conduct to the enforcement agency under section 6.

[28] The applicant's complaint against Dr. Lourdes was clearly under the Medical Act 1971 and Medical Regulations 1974 which have been dealt with by the respondent according to the said statutory provisions.

[29] The applicant now is seeking remedies from the court for detrimental action in reprisal for the disclosure of improper conduct pursuant to s. 15(1) of the WPA 2010 which states:

> 15(1) Upon request made **by a whistleblower**:
>
> (a) Within three months after being informed by the enforcement agency under subsection 14(6) that detrimental action in reprisal for a disclosure of improper conduct has been taken against him; or
>
> (b) At any time that the whistleblower fears that detrimental action in reprisal for a disclosure of improper conduct may be taken against him,
>
> the **enforcement agency** may seek the following remedies from the court:
>
> (A) damages or compensation;
>
> (B) injunction; or
>
> (C) any other relief as the court deems fit. (emphasis added)

[30] As has been found earlier that the applicant was not a whistleblower under the WPA 2010 and the respondent is not an enforcement agency as defined under s. 2 of the same Act, the provision of s. 15(1) is inapplicable. In the circumstances, the applicant's application for relief under the said provision is untenable.

[31] Consequently, the applicant has no basis to seek for an order of *mandamus* as the applicant does not has any legal rights under the WPA 2010 in particular s. 15(1) and the respondent has no duty to act under the said WPA 2010.

[32] On this issue of *mandamus*, it is instructive to make reference to the Court of Appeal case of *Peguam Negara Malaysia v. Dr. Micheal Jeyakumar Devaraj* [2011] 9 CLJ 645, which states the following:

> [27] The law governing the grant or refusal of an order of *mandamus* is to be gathered from three pieces of legislation. More specifically, the relevant provisions are contained in:
>
> (1) S. 44;
>
> (2) Para 1 of the Schedule to the Courts of Judicature Act 1964 ('the Schedule'); and
>
> (3) O. 53.
>
> (see: eg, *Ong Leong Equipment*, *Supra*).

[33] Further, at para. [29], the judge explained and stated as follows:

> [29] In an application for an order of *mandamus*, these five conditions are cumulative. All of them must be satisfied. In *Koon Hoi Chow, supra*, Sharma J enunciated the following principles:
>
> (1) An order under s. 44 is in its nature an order of *mandamus*. It is peremptory order of the court commanding somebody to do that which is was his clear legal duty to do. **The applicant seeking such an order must have a legal right to the performance of such duty by the person against whom the order is sought**;
>
> (2) The prerequisites essential to the issue of an order under s. 44 or of a *mandamus* are:
>
> (a) **Whether the applicant in the High Court has a clear and specific legal right to the relief sought**;
>
> (b) **Whether there is a duty imposed by law on the public officer(s)**;
>
> (c) Whether such duty is of an imperative ministerial character involving no judgment or discretion on the part of the public officer(s); and
>
> (d) Whether the applicant has any remedy, other than by way of *mandamus*, for the enforcement of the right which has been denied to him.

[34] In the present case, the relief for *mandamus* sought by the applicant must fail as the requirement as mentioned above has not been fulfilled.

Conclusion

[35] Based on the abovestated reasons, the applicant's application for judicial review is dismissed with costs of RM5,000.